IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8031 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAM-MAD IQBAL ABDULRRAJJAK BHAI KHALAK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 8031 of 2002

MR MA KHARADI for Petitioner No. 1

MR.K.G.SHETH, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 15/11/2002

ORAL JUDGEMENT

1. Rule. Service of rule is waived by Mr.K.G.

Sheth, learned A.P.P. for the State.

Having regard to the facts and circumstances of the case, this application is taken up for final hearing today.

2. By filing this application, the petitioner has prayed for an order of anticipatory bail in his favour under Section 438, Criminal Procedure Code in connection with crime registered as CR no.I 120/2002 of Modasa Police Station.

3. The facts leading to the present application in nutshell are as follows:

3.1 On or about 13th October,200,2 during the period from 11.30 to 12.30 hrs., mob of about 60 to 70 unruly persons had formed an unlawful assembly. Before this, one Christian Priest had made a derogatory statement for Prophet Mohammed Paygambar in America and in this connection the persons of Muslim community had called Modasa Bandh on 14-10-2002. In connection with the said Modasa Bandh persons had gathered and committed offences punishable under Sections 143, 147, 148 and 135 of the Bombay Police Act. For that incident a complaint was lodged by Police Inspector Shri M.B.Patel, Modasa Town. Said complaint came to be registered as CR no.I 120/2002 of Modasa Police Station. During investigation, the Police Inspector, Modasa Town submitted a report to the learned Judicial Magistrate, First Class, Modasa, to add Section 436, Indian Penal Code in F.I.R. of said crime.

4. In response to the notice issued earlier, the Investigating Officer is present before this Court and he has submitted all the police papers of investigation for my perusal. As per the police papers, the present petitioner was leading the mob and he was present in the unruly mob. The presence of this petitioner in mob is revealed from the statements of Babubhai Shankarlal Luhar Vinodbhai Narsibhai Patel, Allaraja Ibrahim , Abdul Latif Abdulbhai and Ayubbhai Abbasbhai.

5. On reading these police papers, this Court is satisfied that there is a reason to believe that prima facie case is against the petitioner and that he was a member of an unlawful assembly. It appears that police has not applied Section 149 of the Indian Penal Code, but looking to the facts and circumstances of the case and material on record, offence punishable under Section 149 prima facie appears to have been committed by members of the mob.

6. In the case of LOKEMAN SHAH AND ANOTHER VS. STATE OF WEST BENGAL, (2001) 5 SUPREME COURT CASES 235, it has been laid down that it is not necessary that a member of unlawful assembly should take active part in commission of offence. His mere presence is sufficient to attract Section 149 of Indian Penal Code. It is observed as follows:

"Section 142 IPC pertains to a person who intentionally joins an unlawful assembly and continues to involve himself in it. The only condition which the section envisages is that the person who joins the unlawful assembly should have been aware of the facts which rendered such assembly unlawful. If he knew that an unlawful assembly had been formed with a common object and if he has chosen to join it en route to its destination the person joining midway can also be fastended with the vicarious liability envisaged in Section 149 IPC, unless he drops himself out before reaching such destination."

7. Shri K.G.Sheth has argued that investigation is under progress. Though complaint was lodged on 13th October, 2002, the petitioner is not yet traced out. I have perused the case diary also. I am satisfied that the present petitioner is avoiding his presence before the police.

8. Custodial interrogation is very much necessary in view of principle laid down in the case of STATE REP. BY THE C.B.I. VS. ANIL SHARMA, (1997) 7 SUPREME COURT CASES 187. In this case, it has been held as follows:

"Custodial interrogation is qualitatively more elicitation -oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual."

9. Looking to the facts and circumstances of the

case and nature and seriousness of offences, this Court is of the view that in the interest of justice, discretionary order of anticipatory bail should be refused to petitioner. In view of this, this application is devoid of merits, and therefore, it is rejected. Rule is discharged.

(H.H.Mehta,J.)

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